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## Normative Distinction & Intermediate Settlement Mechanism

### Bankruptcy and PKPU in the Indonesian Legal System

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#### Abstract

This research discusses the normative distinction and settlement mechanism between bankruptcy and Suspension of Debt Payment Obligations (PKPU) in the Indonesian legal system. The background of the research departs from the need to clarify the conceptual and procedural limits of the two debt settlement instruments, considering the frequent errors in the application and understanding by the parties. The formulation of the problem is focused on: (1) how the normative differences between bankruptcy and PKPU are reviewed from the applicable regulations; and (2) how the mechanism of each solution instruments in the context of legal protection for creditors and debtors. This study uses normative juridical methods with legislative, conceptual, and case approaches to examine the relevance of norms and their implementation in commercial courts.

The results of the study show that normatively bankruptcy aims to provide liquidation of the assets of debtors who are unable to fulfill their obligations, while PKPU is intended as an effort to restructure debt to prevent bankruptcy through a peace agreement. The fundamental difference is seen in the submission requirements, legal consequences, the position of curators and administrators, and their implications for the debtor's business continuity. In terms of mechanism, there are strict and structured stages both in the process of verifying receivables, voting, and determining decisions by the court. The conclusion of the study emphasizes that normative distinction and settlement mechanisms are both important instruments in maintaining a balance of the interests of debtors and creditors. The suggestions submitted include harmonizing norms, increasing the understanding of stakeholders, and optimizing the role of the court in ensuring the principles of legal certainty and justice.

**Keywords :** *Bankruptcy, PKPU, Debt Settlement Mechanism*

#### Introduction

Debt settlement is one of the important elements in maintaining economic stability and legal certainty in the business realm to avoid long disputes<sup>12</sup>. In the Indonesian context, Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) is the main legal instrument that regulates how debtors and creditors resolve debt disputes in a structured and accountable manner. Although these two mechanisms are in one. The regulatory framework, both have very different paradigms, objectives, and legal consequences.

Bankruptcy functions as a legal mechanism that aims to settle all debtors' assets in order to pay their debts to creditors. Bankruptcy is the settlement of debts and receivables through general confiscation of the debtor's property, where the regulation of bankruptcy has steps, mechanisms, and contributions from various parties, especially those who take care of the debtor, such as Curator<sup>4</sup>. This shows that there is great urgency to review and update the legal principles

underlying Law Number 37 of 2004

Bankruptcy and Postponement of Debt Payment Obligations (PKPU) Law of the Republic of Indonesia Number 37 of 2004 states that debt is a contract or legal requirement that must be fulfilled by the debtor because failure to do so gives the right to the creditor to collect the payment of the debtor's assets<sup>6</sup>. Yitawati, Sulistiyono, and colleagues argue that the reconstruction of the *debt restructuring mechanism* in Indonesian bankruptcy law is increasingly urgent<sup>7</sup>

A comprehensive understanding of these differences is not only important for academics, but also for practitioners, business actors, commercial judges, and regulators. Bankruptcy is a final mechanism that focuses on settling the debtor's assets<sup>8</sup>. In this process, the debtor is basically considered to be no longer able to meet his financial obligations, so a collective mechanism is needed to distribute his assets proportionately to all creditors. This process has serious implications, including the loss of the debtor's right to manage his or her assets as well as the end of the continuation debtor's business. Therefore, bankruptcy is seen as a last resort when there is no alternative solution that can be taken<sup>9</sup>.

In contrast, PKPU is designed as a rehabilitative mechanism that provides an opportunity for debtors to reorganize their debt obligations through a restructuring scheme<sup>10</sup>. This mechanism emphasizes cooperation between debtors and creditors to reach a peace agreement that benefits both parties. Thus, PKPU not only serves to settle debts, but also maintains the debtor's business continuity, especially if the debtor still has viable business prospects<sup>11</sup>. The urgency of distinguishing these two mechanisms is becoming increasingly important considering the increasing number of PKPU and bankruptcy cases that have entered the commercial court in recent years. This phenomenon shows that business actors are increasingly relying on this legal instrument as part of their debt settlement strategy. However, the increasing use of these two mechanisms also raises various problems, such as the abuse of PKPU to delay payment obligations, inconsistencies in judges' decisions, and variations in the quality of curators and administrators<sup>12</sup>.

From a theoretical perspective, the difference between bankruptcy and PKPU reflects a paradigm shift in modern insolvency law. Bankruptcy is closer to the classical paradigm that emphasizes asset liquidation, while PKPU reflects the contemporary paradigm that focuses on corporate . These two paradigms are intertwined with the principles of fairness, *legal certainty*, and efficiency (*efficiency*), and *good faith* which is the main basis of the law insolvency<sup>14</sup>. The selection of the right mechanism between bankruptcy and PKPU greatly determines the outcome of debt settlement. If the debtor actually still has business prospects, then PKPU will be a more appropriate choice, Because it will provide higher economic value for debtors and creditors. On the other hand, if the debtor no longer has financial ability or decent business prospects, then bankruptcy is a more appropriate mechanism to provide certainty for creditors.

In the midst of the need to understand the conceptual and procedural differences, this research is here to provide an in-depth analysis of the basic nature, legal objectives, procedural differences, and implications of the two mechanisms. Through a normative juridical approach supported by an analysis of commercial justice doctrine and practice, this study seeks to provide a comprehensive overview of how bankruptcy and PKPU work in the Indonesian legal system<sup>15</sup>. A better understanding of the differences and implications of bankruptcy and PKPU is expected to help business actors and creditors in making more strategic decisions while contributing to the improvement of the insolvency law system in Indonesia. In this context, bankruptcy and PKPU are not only legal

instruments, but also part of economic governance that determines the direction of business sustainability, financial stability, and national investment climate.

## **THEORETICAL FOUNDATIONS AND CONCEPTUAL FRAMEWORK**

The discussion of bankruptcy and Suspension of Debt Payment Obligations (PKPU) cannot be separated from the theories underlying the concept of insolvency in the legal system. In the Indonesian context, the formation of the bankruptcy system and PKPU was rooted in classical thinking about creditor protection<sup>16</sup>, but later developed following modern trends emphasizing the principles of justice, economic efficiency, and business rescue<sup>17</sup>. This section discusses these fundamental theories and how they form the concept of bankruptcy and PKPU as it applies today.

### **1. Theory of Bankruptcy Law**

Bankruptcy law theory essentially seeks to explain why the state needs to provide a specific mechanism for settling debts when debtors are unable to pay. One of the most fundamental theories is *the collective debt collection theory*, which emphasizes the need for collective mechanisms to prevent creditors from acting alone in collecting debts. In Under normal conditions, creditors can collect civilly, but in the event that the debtor is unable to pay, individual actions will actually harm the creditors as a whole. Therefore, the bankruptcy mechanism is present as a solution to ensure a fair and proportionate distribution. The concept of *parity*

*Creditorum* or the principle of creditor equality is also the main foundation of law bankruptcy. This principle outlines that creditors must receive fair treatment according to their respective level of standing<sup>18</sup>. Although there are differences between separatist, preferential, and concurrent creditors, the basic principle is that no creditor should be privileged without a clear legal basis<sup>19</sup>. In addition, the determination of Bankruptcy is based on the principle of *Act of Default* or default of payment<sup>20</sup>

### **2. Debt Restructuring Theory**

In contrast to bankruptcy, PKPU departs from a modern paradigm that emphasizes business rescue doctrine. This paradigm develops from the understanding that companies experiencing financial difficulties are not necessarily economically unviable<sup>21</sup>. Conversely, companies may experience temporary liquidity difficulties that can be remedied through debt restructuring or rescheduling of liabilities. Thus, PKPU functions as a tool to maintain a going concern value that is greater than the liquidation value<sup>22</sup>. In the insolvency *law literature*, there is the idea that rescue business provides greater benefits for creditors, debtors, employees<sup>23</sup>, and the wider community<sup>24</sup>. This theory is supported by a legal economic approach that assesses that maintaining a company that is still productive provides greater added value than total liquidation through bankruptcy.

### **3. Relevant Legal Principles**

#### **a. The Principle of Justice**

The principle of justice demands that the debt settlement mechanism reflects a balance between the interests of creditors and debtors<sup>25</sup>. In the context of bankruptcy, the distribution of the debtor's assets must be carried out fairly and proportionately<sup>26</sup>. In the context of PKPU, the principle of justice requires the goodwill of the debtor and creditors in formulating peace<sup>27</sup>.

### **b. The Principle of Legal Certainty**

Legal certainty is a fundamental principle that requires that the rules and judicial processes can provide clarity to the parties<sup>28</sup>. Setting application requirements, processing deadlines, and the authority of judicial institutions are part of the application of this principle. This principle is very important in guaranteeing the rights of concurrent creditors in the settlement of bankruptcy proceedings<sup>29</sup>

### **c. Efficiency Principles**

Both bankruptcy and PKPU must be carried out with efficient cost, time, and resources. The setting of the deadline in PKPU (45 days for temporary PKPU, and a maximum of 270 days for permanent PKPU) reflects the application of the principle of efficiency. In bankruptcy, the settlement process must be carried out without causing waste of debtor's assets<sup>30</sup>.

### **d. The Basis of Good Faith**

Good faith is very important in PKPU because this mechanism is based on cooperation between debtors and creditors. The debtor may not apply for PKPU just to postpone obligations<sup>31</sup>. On the other hand, creditors should consider the long-term benefits of peace.

## **4. The Concept of Bankruptcy as a Settlement Mechanism**

Bankruptcy is understood as a mechanism to settle the assets of debtors who are unable to pay off their debts. Article 1 number 1 of Law Number 37 of 2004 defines bankruptcy as general confiscation of all assets of a bankrupt debtor whose management and settlement are carried out by the curator under the supervision of the supervisory judge<sup>32</sup>. Thus, the right to manage and the right to control the debtor's property pass to the curator.<sup>33</sup> The Gospel of Jesus Christ

The concept of settlement shows that the main purpose of bankruptcy is to collect and distribute the debtor's assets to creditors<sup>34</sup>. Therefore, bankruptcy is a final mechanism and ends the debtor's business activities unless in certain circumstances it is still possible to continue the business. In this context, bankruptcy can arise due to the cancellation of PKPU<sup>35</sup> homologation.

## **5. The Concept of PKPU as a Business Recovery Mechanism**

PKPU is regulated in Article 222 of Law Number 37 of 2004 as a mechanism that provides an opportunity for debtors to submit a peace plan that includes an offer to repay part or all of the debt to creditors. Unlike bankruptcy, PKPU provides space for debtors to maintain the sustainability of their business. In this framework, PKPU functions as an instrument of restructuring, not liquidation.

PKPU reflects the paradigm of modern insolvency law that makes restructuring a preferred option when the company still has business prospects. Through the creditor voting mechanism, PKPU creates opportunities for debtors to achieve sustainable business recovery.

## **LEGAL BASIS AND REGULATORY STRUCTURE**

Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (Law 37/2004) is the main regulation that regulates two debt settlement mechanisms, namely bankruptcy and PKPU. This law contains provisions regarding the requirements for submitting applications, process stages, involvement of

judicial institutions, and the role of the actors involved. To understand the conceptual and procedural differences between the two mechanisms, it is important to first understand the regulatory structure and the legal basis that underlies it<sup>36</sup>.

### **1. Structure and Scope of Law 37/2004**

Law 37/2004 consists of several chapters that regulate both bankruptcy and PKPU. The section on bankruptcy generally starts from the general provisions, application requirements, bankruptcy judgment, legal consequences of the bankruptcy judgment, the position of creditors, to the settlement and rehabilitation mechanism. Meanwhile, the section on PKPU includes provisions regarding submission requirements, the temporary and permanent PKPU process, peace plans, voting mechanisms<sup>37</sup>, and the legal consequences of PKPU decisions. Thus, Law 37/2004 regulates two different but interrelated mechanisms. These two mechanisms are in one law because they are both forms of debt settlement in the context of insolvency, although the purpose and process are different.

### **2. Difference in Arrangement between the Bankruptcy Chapter and the PKPU Chapter**

Even though they are in one law, the Bankruptcy Chapter and the PKPU Chapter have different arrangements that reflect the difference in the philosophy of the two mechanisms. Chapter Bankruptcy emphasizes the mechanism settlement by transferring control of the debtor's assets to the curator. On the contrary, the PKPU Chapter emphasizes on the opportunity for the debtor to propose a peace plan that is acceptable to the creditor. One of the fundamental differences is that bankruptcy can be filed by both debtors and creditors, while PKPU is more seen as a facility provided to debtors who still have business prospects. In the context of PKPU, the role of creditors is very decisive through the voting mechanism in creditors' meetings. Another difference lies in the nature of legal consequences. In bankruptcy, the legal consequences are final and detrimental to the debtor because the debtor loses the right to control his property<sup>38</sup>. On the other hand, in PKPU, the debtor still has the opportunity to rearrange his financial obligations so that his business can continue.

### **3. The Role of Commercial Courts and Legal Actors**

The Commercial Court plays a central role in the bankruptcy process and PKPU<sup>39</sup>. This court has the authority to receive and examine applications, issue judgments, appoint curators or administrators, and supervise the proceedings through supervisory judges. The existence of the Commercial Court is intended to create a fast, fair, and professional debt dispute resolution forum. In addition to commercial judges, curators and administrators are important actors in the bankruptcy and PKPU process. The curator plays the role of managing and clearing the assets of the bankrupt debtor, while the management is tasked with accompanying and supervising the management of the debtor's assets in PKPU<sup>40</sup>. The quality and professionalism of the curators and administrators greatly affect the effectiveness of the bankruptcy process and PKPU<sup>41</sup>. The administrator in PKPU is tasked with ensuring that the debtor does not abuse the procedure for certain interests, while the curator in bankruptcy is tasked with resolving the settlement in a transparent and accountable manner. Interaction between The administrator or curator with the supervising judge indicates the importance of court supervision of the *insolvency process*.

### **4. General Principles in Bankruptcy and PKPU Regulations**

Law 37/2004 also reflects several important legal principles<sup>42</sup>. First, the principle of openness, where the bankruptcy process and PKPU must be conducted openly to allow

creditors to supervise the process. Second, the principle of speed, which provides a certain time limit for PKPU procedures. Third, the principle of efficiency, which emphasizes that the process should not incur unnecessary costs. The Commercial Court also applies the principle of accountability through the role of the supervisory judge in supervising the actions of curators or administrators. The curator is obliged to provide periodic reports, while the PKPU management is obliged to report the actions of asset management to the court. This strengthens the integrity and transparency of the insolvency process.

## **IMPLEMENTATION CHALLENGES AND PRACTICAL PROBLEMS**

Although the legal framework for bankruptcy and PKPU in Indonesia has been comprehensively regulated through Law No. 37 of 2004, its implementation in the field still faces various challenges. Practical problems arise both in the aspect of the judicial process, the quality of legal actors, and the dynamics of the use of PKPU and bankruptcy mechanisms strategically. This section identifies and analyzes these problems systematically.

### **1. Abuse of PKPU as a "Delay" Tool**

#### **a. PKPU as an Instrument for Payment Delay**

PKPU is designed as a means of saving businesses, not as a means of avoiding obligations. However, in practice, many debtors apply for PKPU without a realistic peace plan. The real motive is to delay debt payments for 45 days temporarily or take advantage of the fixed PKPU to gain additional time. In this situation, the debtor uses PKPU as a litigation tactic to avoid pressure from creditors, especially creditors who are already in the collateral execution phase.

#### **b. Court Response to PKPU Abuse**

Some rulings show the tendency of the court to reject PKPU if the debtor is considered to have no good faith or the ability to prepare a credible peace proposal. However, the standard of "good faith" has not been strictly formulated, so the assessment depends on the discretion of the panel of judges. The lack of detailed arrangements opens up room for interpretation that is sometimes inconsistent between courts.

### **2. Uncertainty of Legal Interpretation by the Court**

#### **a. Inconsistency of Commercial Court Decisions**

The difference in the interpretation of the panel of judges regarding the "simple" element in proving bankruptcy is one of the main challenges. In some cases, the judge considered that proving the debt was very simple, while other cases with a similar character were stated to require further proof. This inconsistency creates uncertainty for creditors and debtors in choosing the right legal mechanism.

#### **b. Lack of Consistent Voter Jurisprudence**

Indonesia does not have a tradition of *binding precedent*, so court decisions that are supposed to be guidelines are often not used consistently. This makes it difficult to develop a stable and predictable bankruptcy legal system. As a result, creditors and debtors are faced with significant legal risks in choosing a debt settlement mechanism.

### **3. Quality and Accountability of Curators/Administrators**

#### **a. Uneven Competence of Curators**

The curator has a strategic task in settling bankruptcy assets. However, not all curators have equal competence. There are highly professional curators, but not a few lack understanding of the basic principles of accounting, asset management, or treasure investigation techniques. This difference in quality causes the results of the settlement to vary greatly

between cases.

### **b. Curatorial Supervision and Potential Conflicts of Interest**

Although supervision is carried out by the supervisory judge, this mechanism is not effective in preventing irregularities. The curator holds significant power over the bankruptcy assets, so it is vulnerable to conflicts of interest, especially in the process of selling assets through auctions or third-party appointments.

### **c. PKPU Management and the Challenge of Independence**

The management should be in a neutral position between creditors and debtors. However, in practice, there is often an assumption that the management tends to side with the debtor, especially if the debtor is a large corporation. The limited regulation regarding the independence of the management contributes to this perception.

## **4. Lack of Legal Education for Business Actors**

### **a. Low Business Law Literacy**

Most micro, small, and medium enterprises (MSMEs) do not understand the bankruptcy mechanism or PKPU. They only realize the legal implications when they are on the verge of a dispute. The lack of literacy causes MSMEs to not be able to use PKPU as a business rescue mechanism, even though ideally PKPU is very suitable for businesses that still have prospects but face liquidity difficulties. The impact on Investors and Small Creditors, namely Lack of education is also experienced by small creditors, for example retail investors in fintech lending schemes. They are often unaware of their rights in bankruptcy, including their legal standing as concurrent creditors. Many small creditors lose the value of their investments because they do not file bills or misunderstand their rights in the receivables verification process.

## **STRUCTURAL AND REFLECTIVE RECOMMENDATIONS**

This section presents structural, normative, and reflective recommendations to improve the effectiveness of bankruptcy and PKPU mechanisms in the Indonesian legal system. This recommendation departs from the identification of problems in previous chapters, especially regarding the abuse of PKPU, judicial inconsistencies, the quality of legal actors, and the lack of legal literacy among business actors.

### **1. Regulatory Reform and Affirmation of Mechanism Limits**

#### **a. Strengthening the Normative Framework for Bankruptcy and PKPU**

Law No. 37 of 2004 has been in operation for more than two decades, but has not undergone major revisions even though economic dynamics and business models have changed drastically. Regulatory reform is needed to:

1. Clarify the limits of the concept of "simple proof" so that bankruptcy is not misused for certain commercial interests.
2. Emphasizing the definition and requirements of PKPU, especially regarding the aspect of the debtor's ability to prepare a realistic peace plan.
3. Adding objective standards regarding goodwill, including financial parameters, payment history, and debtor behavior.

#### **b. Harmonization with Financial Sector Regulations**

Bankruptcy and PKPU against financial institutions—banks, insurance companies, and fintech companies—have special characteristics that require harmonization with regulators such as the OJK and Bank Indonesia. The current rules are still fragmented and often create ambiguity

regarding jurisdiction and supervisory authority.

## **2. Strengthening the Capacity of Legal and Supervisory Actors**

### **a. Standardization of Curator and Administrator Competency**

The need for a more stringent competency-based certification system for curators and administrators, including:

- a. Asset Management Training,
- b. Financial Audits,
- c. Asset Investigation ,
- d. Digital Forensics,
- e. governance and professional ethics.

Competent curators and administrators will reduce potential conflicts of interest and increase accountability in the debt settlement process.

### **b. Strengthening the Role of Supervisory Judges**

Supervising judges play an important role in ensuring curators and administrators act within the legal corridor. Reform should be directed at:

- 1) Enhancing the technical capacity of the judges.
- 2) Preparation of standard operating guidelines,
- 3) Increased transparency of curatorial reports to creditors.

Effective supervision can increase creditors' confidence and protect bankruptcy assets from irregularities.

## **3. Integration of *Adaptive Governance Principles* in Commercial Justice**

### **a. The Need for Adaptation to the Digital Economy**

Modern debt structures are increasingly complex, involving digital instruments, crypto assets, fintech loans, and cross-border electronic contracts. The principles of *adaptive governance* encourage the judiciary to:

- a. regularly update the judge's guidelines,
- b. adopt inspection support technology,
- c. provide an easily accessible database of bankruptcy jurisprudence,
- d. Conducting *continuous learning* through collaboration with academics and regulators.

### **b. Flexibility in Assessing New Financing Structures**

In practice, many debtors and creditors use financing structures that are not known in conventional law. Commercial courts should have methodological flexibility to assess the legality and priority of credit in such schemes. It also includes an understanding of *smart contracts* and *tokenized assets*.

## **Conclusion**

PKPU is designed as a *corporate rescue* mechanism that inherently requires more complex and layered procedural steps compared to bankruptcy, which is a liquidation process. This layered structure not only shows the difference in stages, but also reflects a legal philosophy that gives the Debtor a *second* chance, which requires supervision, negotiation, and multi-level approval.

The first layer in the PKPU process is the Application and Determination Stage of Temporary PKPU. This process begins with the submission of an application by the Debtor or Creditor, who must meet the requirements of *concursum creditorum* (at least two Creditors)

and the debt is due. After the application is granted, the Commercial Court determines the Provisional PKPU decision (maximum 45 days). At this stage, the court immediately appoints a Supervisory Judge and appoints one or more Administrators (not Curators), who are in charge of managing the Debtor's assets together with the Debtor himself. The second layer includes Force Termination and Preliminary Verification. Since the temporary PKPU decision was issued, all enforcement actions against the Debtor suspended (moratorium). This provides a layer of legal protection that allows the Debtor to focus on restructuring. The Administrator, together with the Debtor, immediately conducts an initial inventory and verification of the Creditor's assets and list of receivables, an essential first step before entering into substantial negotiations.

The third layer is the Preparation and Submission of a Peace Plan (Restructuring Proposal). Within the interim PKPU deadline, the Debtor is obliged to prepare a peace proposal, which is the heart of the entire PKPU process. This proposal must contain a detailed debt restructuring scheme, including payment schedules, tenor changes, or other offers. Creditors accept and study this plan, marking the beginning of an intensive and layered negotiation phase, in contrast to bankruptcy where the focus is directly on the sale of assets. The fourth, and most crucial, layer is the Layered Voting and Quorum Process. To become a Permanent PKPU (maximum 270 days), the Debtor must obtain an extension approved by the Creditor. Approval of the final Peace Plan requires a multi-layered voting mechanism: there must be approval from the Separatist Creditors (who control at least two-thirds of the total Separatist bills) and the Concurrent Creditors (who control more than half of the Concurrent bills). These two groups of creditors vote separately, creating a much more complex and layered approval structure compared to the bankruptcy settlement process.

The fifth layer is the Homologation Decision (Ratification of the Agreement). If

The Peace Plan was successfully approved by the majority of Creditors according to a multi-layered quorum, the Commercial Court issued a Homologation Decision. This judgment is a layer of legal legitimacy that binds all Creditors, including those who vote against. This ruling created a new agreement, which signaled the success of the rescue effort and ended the PKPU.

The sixth layer is the Implementation Supervision Layer. After homologation, the Management of the Debtor (becoming the Implementation Supervisor) continues to supervise the Debtor in implementing the content of the peace agreement. This layer of post-resolution supervision is almost non-existent in bankruptcy, as bankruptcy ends with the closure of the bankruptcy. In PKPU, this supervision is important to ensure that the Debtor fulfills its restructuring commitments. The seventh layer is the Sanctions Layer and Automatic Conversion to Bankruptcy. If the Debtor fails to meet the multi-layered quorum in the voting, or if he is proven to be negligent in carrying out the Homologation Decision, PKPU will automatically or through the Creditor's request be converted into Bankruptcy. This conversion layer confirms that PKPU is only a conditional opportunity, and failure in each layered stage will return the process to a settlement mechanism. Therefore, PKPU in a

The whole is a multi-layered legal structure. From the appointment of a collaborative Board (not an executive Curator), the imposition of a moratorium, the formulation of proposals, to a separate quorum vote, each stage is designed to facilitate negotiation and consensus. Its multi-layered goal is to achieve a fair *corporate rescue*, thus requiring stricter procedural requirements and longer oversight than direct liquidation in Bankruptcy.

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